No. 96-513

(3)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

V-1 OIL COMPANY, an Idaho Corporation,

Petitioner,

vs.

IDAHO PETROLEUM CLEAN WATER TRUST FUND,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Idaho

REPLY BRIEF FOR PETITIONER

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FURTHER REASONS FOR GRANTING THE WRIT

I.

THE FEDERAL ISSUE IN THIS CASE ARISES BECAUSE THE SUPREME COURT OF IDAHO HAS VIOLATED DUE PROCESS BY DENYING V-1 OIL OF ANY CONSTITUTIONALLY SUFFICIENT REMEDY THAT WOULD PROTECT THEIR PROPERTY INTEREST IN TAX MONIES TAKEN FROM THEM PURSUANT TO AN UNCONSTITUTIONAL TAX SCHEME.

A. Due process requires a constitutionally sufficient remedy be provided to a taxpayer for any unlawful exaction.

The Respondent asks for this Court to deny Petitioner's Writ of Certiorari because of the independent state grounds by which the Idaho Supreme Court based its denial of any remedy to V-1. As such, Respondent erroneously believes that there is no federal question at issue in this case. It is obvious that the Respondent has very little understanding of due process principles and has, at best, not done more than a cursory reading and shallow analysis of *McKesson Corp. v. Division of Alcohol, Beverages and Tobacco*, 496 U.S. 18 (1990) and *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993). The federal question at issue here, despite the Respondent's erroneous assertion that only state law is implicated, is that the Idaho Supreme Court has deprived V-1 of all remedies for its unlawful exaction of tax monies pursuant to the Clean Water Trust Fund's "transfer fee."

Respondent's reliance on independent state grounds as a basis for this Court to deny Petitioner's Petition for Writ of Certiorari is irrelevant here. The federal constitutional question is what remedy must a state provide when it collects an

impermissible tax. Therefore, the Respondent's assertion that "the Idaho Supreme Court, not Petitioner, has the final word on interpreting Idaho law," is misleading to this Court because we are deciding a federal due process issue. (Respondent's Brief in Opposition, p. 6). The United States Constitution requires Idaho to provide a remedy consistent with federal due process principles when it collects an impermissible and unlawful tax. The fact that, "this Court has never held that, under the federal due process clause, when a state tax is declared to violate a state constitution, a refund is required," is what makes this case unique and possibly one of first impression to this Court. (Respondent's Brief in Opposition, p. 5-6). Here, the Idaho Supreme Court is holding that the state can take a taxpayer's money impermissibly and unlawfully and not provide any form of remedy. This clearly is repugnant to the notions of due process, and Petitioner is not aware of any other circumstances when the government can take money impermissibly and unlawfully and not provide for a remedy. Because the nature of the tax is one in which a person is deprived of their property, it should be obvious to Respondent that due process is necessary to protect taxpayers from unlawful and impermissible exactions as well as to provide a remedy. This Court has fashioned and articulated this principle in several cases including *McKesson* and, more recently, in *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993).

McKesson holds that, "[b]ecause exaction of a tax constitutes a deprivation of property, the state must provide procedural safeguards against unlawful exactions in order to satisfy the commands of the due process clause." *McKesson Corp. v. Division of Alcohol, Beverages and Tobacco*, 496 U.S. 18, 36 (1990). This decision illustrates that federal law sets a certain minimum requirement that states must meet, but may exceed, in providing appropriate relief when a taxpayer has involuntarily paid a tax that is later held to be unconstitutional.

The *McKesson* holding is broad, and emphatically stands for the principle that the United States Constitution requires a state to provide a remedy consistent with federal due process principles when a state collects an impermissible and unlawful tax.

The soundness of the *McKesson* holding is unquestioned. However, this Court underscored its holding in the later opinion of *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993). The *Harper* Court held that in a situation where a tax is impermissibly exacted, and, if there is no pre-deprivation hearing or other procedural safeguard sufficient by itself to satisfy the due process clause, "the due process clause of the Fourteenth Amendment obligates the state to provide meaningful backward-looking relief to rectify any unconstitutional deprivation." *Harper* at 101 (*citing McKesson* at 31). In *Harper*, decided three years after *McKesson*, this Court ruled on the appropriate remedy for a Virginia state statute which taxed federal retirees while exempting state and local retirees. Four hundred and twenty-one federal and civil service and military retirees sought a refund of taxes erroneously or improperly assessed. *Id.* at 91. The trial court, just as erroneously as the Idaho Supreme Court, denied relief and the Supreme Court of Virginia affirmed, relying on independent and adequate state grounds. *Id.* at 100. In reversing the judgment, this Court opined, "We do not enter judgment for petitioners, however, because federal law does not necessarily entitle them to a refund. Rather, the constitution requires Virginia to provide relief consistent with federal due process principles." *Id.* (*citing American Trucking Associations, Inc. v. Smith*, 496 U.S. 167, 181 (1990)) (internal citations omitted). Hence, despite Respondent's attempt to divert this Court's attention to an irrelevant state ground theory and to deny any federal issue, the principle is clear: the Constitution requires Idaho to provide relief consistent with federal due process principles for the unlawful exaction of taxes from V-1. It is undeniable that the

Idaho Supreme Court clearly contravened this Court's established precedent when it denied any remedy whatsoever to V-1 for the state's impermissible and unlawful tax.

As was pointed out in the Petition for Certiorari, without this Court's review, the State of Idaho has effectively deprived V-1, and all other parties who have paid the "transfer fee," of all constitutionally protected remedies; in so doing the State of Idaho will receive a windfall of approximately $50,000,000.

B. Idaho has not provided any remedy, much less a constitutionally sufficient one, for its unlawful exaction of tax monies from V-1, and therefore has violated the federal due process clause.

Despite this Court's precedent, which the Petitioner cited in its Petition for Rehearing, and the notions of due process, the Idaho Supreme Court has summarily denied any remedy to V-1 for challenging the unlawful exaction of taxes. V-1, as well as many others, have paid a sizeable amount into this impermissible tax scheme. To date, the fund contains in excess of $50,000,000. (Petition for Writ of Certiorari, Appendix F, p. 80a). This money now sits in a fund while the Idaho legislature eagerly waits to apportion it in a way that is consistent with the Idaho constitution. But obviously, the people who paid into the fund have been treated in a discriminatory fashion because they will not receive the benefit for which the Fund was intended. In other words, by completely depriving V-1 and others of any remedy, the Idaho Supreme Court has bestowed upon the State of Idaho what is tantamount to a $50,000,000 gift collected only from those who paid into the unlawful fund. Moreover, V-1 cannot go to the tax commission to seek further remedy. Despite statutory authority which allows for a party paying a gas tax erroneously to claim a credit or refund, V-1 is without a procedure, judicially or administratively, to seek any further

remedy. The highest court of Idaho has spoken and in spite of due process principles and this Court's clear precedent, they have taken it upon themselves to be the final arbiter in deciding V-1's remedy. V-1 is restrained by the court's ruling from seeking further remedy. However, in *Harper* it was held that the state itself must provide the appropriate remedy "so long as that relief satisfies the minimum federal requirements we have outlined." *Harper* at 102 (*citing McKesson* at 51-52).

In addition to the complete denial of any constitutionally sufficient remedy for V-1, it is important to note that because the Idaho Supreme Court ruled on the issue *sua sponte*, V-1 was never given the opportunity adequately argue, brief or present the remedy issue. The Idaho Supreme Court effectively "Blind Sided" V-1 when it arbitrarily ruled on the remedy issue. V-1's entitlement to a refund or other appropriate relief was never an issue on appeal to the Idaho Supreme Court. In fact, the trial court in its memorandum granting partial summary judgment expressly concluded that there existed a genuine issue of material fact as to whether V-1 was entitled to a refund. (Petition for Certiorari, App. "E" p. 75a-76a). The relief issue was therefore properly left for the trial court.

The Idaho Supreme Court also expressly recognized that the record was not sufficient to determine, as a matter of law, what remedy was available to V-1 Oil. (Petition for Writ of Certiorari, App. "A" p. 7a). Consequently, in the Idaho Supreme Court's August 3, 1995 opinion, the court did not address the remedy issue. At that point, V-1 was correct in believing that the issue would be resolved in the trial court. However, on rehearing and in the Idaho Supreme Court's substitute opinion of July 2, 1996, the Court contradicted its recognition that the proceedings below and record were insufficient, and ruled on the remedy issue anyway. This ruling was issued without a factually developed record, presentation of evidence, briefing, arguing or being an issue even certified for appeal.

Before the court's final substitute opinion of July 2, 1996 and after the court's substitute opinion of April 16, 1996, in an attempt to point out the court's grave error, V-1 submitted a Petition for Rehearing and Memorandum. However, the court summarily dismissed V-1's contentions without argument and flatly held V-1 was not entitled to a refund. Given the insufficient record, the lack of oral argument, briefing, the presentation of evidence and the fact that the remedy issue was never certified for appeal, it is overwhelmingly clear that V-1 has not been able to adequately present the issue. Therefore, Respondent's "patently false" accusation is unwelcome, and erroneous. (Respondent's Brief in Opposition, p. 9). Much like the Respondent's novice interpretation and analysis of *McKesson*, it is apparent that the Respondent also fails to appreciate the due process considerations that are required in our judicial system. V-1 was never given the adequate opportunity to argue, brief or present the remedy issue. As the *McKesson* and *Harper* courts have emphasized, "state law may provide relief beyond the demands of federal due process, but under no circumstances may [a state] confine petitioners to a lesser remedy." *Harper* at 102 (*citing McKesson* at 44-51) (internal citations omitted). In the case at hand, the Idaho Supreme Court has not just lessened the federal due process remedy to which V-1 is entitled, the Court has eliminated it altogether.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the Petition for Writ of Certiorari, Petitioner respectfully submits this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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